



# **PLANNING COMMISSION AGENDA REPORT**

MEETING DATE: SEPTEMBER 12, 2005

*II.3.*  
ITEM NUMBER

SUBJECT: APPEAL OF DEVELOPMENT REVIEW DR-05-05  
2314 NEWPORT BOULEVARD

DATE: SEPTEMBER 1, 2005

FOR FURTHER INFORMATION CONTACT: WENDY SHIH, ASSOCIATE PLANNER (714) 754-5136

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## **PROJECT DESCRIPTION**

Appeal of Planning staff's approval of a 2,500 square foot, single-story commercial building on the subject property.

## **APPLICANT**

Craig Richie is representing the property owner, John Geyer. The appellant is Glenford G. Dwyer.

## **RECOMMENDATION**

Uphold staff's approval of the project by adoption of Planning Commission resolution, subject to conditions.

  
WENDY SHIH  
Associate Planner

  
KIMBERLY BRANDT, AICP  
Principal Planner

**PLANNING APPLICATION SUMMARY**

Location: 2314 Newport Blvd. Application: DR-05-05

Request: Appeal of development review to construct a new, 2,500 sq.ft., single-story commercial building.

**SUBJECT PROPERTY:**

Zone: C1  
General Plan: Commercial Residential  
Lot Dimensions: 60 ft. x 150 ft.  
Lot Area: 9,000 sq.ft.  
Existing Development: Vacant lot with a wireless communication facility (monopole and related equipment).

**SURROUNDING PROPERTY:**

North: C1 – commercial  
South: C1 – commercial  
East: R2-HD – residential (across an alley)  
West: 55 Freeway (across Newport Boulevard)

**DEVELOPMENT STANDARD COMPARISON**

<u>Development Standard</u>	<u>Code Requirement</u>	<u>Proposed/Provided</u>
Lot Size:		
Lot Width	120 ft.	60 ft.*
Lot Area	12,000 sq.ft.	9,000 sq.ft.*
Floor Area Ratio:		
(Moderate Traffic FAR)	.30 (2,700 sq.ft.)	.28 (2,500 sq.ft.)
Building Height:	2 stories/30 ft.	1 story/ 30 ft.
Interior landscaping:	250 sq.ft.	473 sq.ft.
Setbacks:		
Front	20 ft.	15 ft.**
Side (left/right)	0 ft./15 ft.	0 ft./34 ft.
Rear (to residential property line)	60 ft.	57 ft.***
Parking:		
Standard	9	9
Handicapped	1	1
TOTAL:	10	10
Driveway width:	14 ft. minimum (one-way behind 45-degree angled parking spaces)	15 ft. – 25 ft.

CEQA Status Exempt, Class 3

Final Action Staff

\* Legal nonconforming.

\*\* Newport Boulevard Specific Plan Section 2.8.

\*\*\* Minor Modification for 5% (3 ft.) encroachment.

## **BACKGROUND**

The property is located three lots north of 23<sup>rd</sup> Street, on the east side of Newport Boulevard. It is zoned C1 (Local Business District), has a General Plan designation of commercial residential, and is within the Newport Boulevard Specific Plan (NBSP) area. The property contains a wireless facility (flag monopole and related equipment) along the southern property line. The applicant proposes to construct a 2,500 square foot, single-story commercial building along the northern property line. Consistent with the goals of the NBSP, this building would allow neighborhood-serving commercial uses.

On July 19, 2005, Planning staff approved the applicant's request because, with the exception of a minor modification for the rear building setback, the project satisfies all applicable commercial development standards and the Newport Boulevard Specific Plan. Glenford G. Dwyer, owner of Surround Sound located on the adjacent property to the north (2318 Newport Boulevard), appealed staff's decision because he feels approval of the project would create a hardship on his business and create an unsafe access onto the property where his business is located.

## **DISCUSSION**

With exception of a minor modification to encroach 3 feet into the required rear setback as measured from the residential property line, the proposed development meets or exceeds all commercial development standards and the NBSP development standards. In an effort to facilitate the eventual closure of alleys, the NBSP requires elimination of alley access whenever feasible. However, due to the nonconforming narrow lot width (60 feet existing; 120 feet required), driveway, parking, and vehicular back-out requirements, and the existing wireless facility along the southern property line, it is not feasible to provide a two-way driveway from Newport Boulevard at the front of the property and to require elimination of the alley access. The Transportation Services Division has confirmed that the alley is a public alley, continuous between Wilson Street and 23<sup>rd</sup> Street, and provides access to all properties within that block. There is no plan in the near future to close the alley.

Although the adjacent property to the north had used the subject (vacant) property for access to the rear of that lot, staff found no recorded easement or shared access agreement between the properties. Staff found three plans or permits (see attached) from 1962, 1978, and 1996, showing the two lots as separate developments. The adjacent property showed a 10-foot setback to the southern property line since 1962. In 1978, a fence was permitted around the subject site to screen outdoor storage, which left a 10-foot setback or access width between the adjacent building and the property line. Since the adjacent lot containing the appellant's business (Surround Sound) has parking spaces at the front and a public alley exists at the rear, the Transportation Services Division does not require access from the front to the rear of the lot.

The Zoning Code requires a minimum 20 foot front building and landscaping setback. However, Section 2.8 of the NBSP allows the front setback to be reduced to a minimum of 10 feet provided that a landscaped planter area, a minimum 5 feet width, is provided along the rear property line to provide a buffer to adjacent residential uses. The applicant is proposing a 15-foot front setback with a 5-foot planter at the rear of the property. The proposed site design complies with the NBSP.

**ALTERNATIVES**

If the development review were not approved, it would prevent the proposed project from being constructed on the property. The applicant could not submit substantially the same project for six months.

**CONCLUSION**

Since the project satisfies all applicable standards for development and the NBSP, and staff does not anticipate any significant adverse traffic impacts, provided that the recommended conditions of approval are complied with, staff recommends that the project approval be upheld.

Attachments:      Appeal Application Form  
                          Description/Justification Form  
                          Zoning/Location map  
                          Aerial Photograph  
                          Plans  
                          Plans from 1962, 1978, and 1996  
                          Draft resolution including exhibits "A" and "B"  
                          Staff's approval letter dated July 19, 2005

Distribution:      Deputy City Manager - Dev. Svs. Director  
                          Sr. Deputy City Attorney  
                          City Engineer  
                          Peter Naghavi, Transportation Services Manager  
                          Dennis Johnson, Assistant Engineer  
                          Fire Protection Analyst  
                          Staff (4)  
                          File (2)

cc:                  John Geyer  
                          1200 Nottingham Rd.  
                          Newport Beach, CA 92660

Craig Richie  
 3500 S. Greenville St., Unit C-24  
 Santa Ana, CA 92704

Maggie Kavoussi  
 2318 Newport Boulevard  
 Costa Mesa, CA 92627

Glenford G. Dwyer  
 The Vulture Group, Inc.  
 2318 Newport Boulevard  
 Costa Mesa, CA 92627

CITY OF COSTA MESA  
P.O. BOX 1200  
COSTA MESA, CALIFORNIA 92626  
APPLICATION FOR APPEAL OR REHEARING

check #1183  
FEE: \$700

Applicant Name GLENFORD G. DWYER  
Address 2318 NEWPORT BLVD., COSTA MESA, CA 92627  
Phone (949) 515-1888 Representing SURROUND SOUND

Decision upon which appeal or rehearing is requested: (Give number of rezone, zone exception, ordinance, etc., if applicable, and the date of the decision, if known.) DR-05-05 APPROVED BY PLANNING DEPT ON 7/19/05  
ON DEVELOPMENT OF 2314 NEWPORT BLVD.

Decision by: STAFF, PLANNING DEPT

Reason(s) for requesting appeal or rehearing:

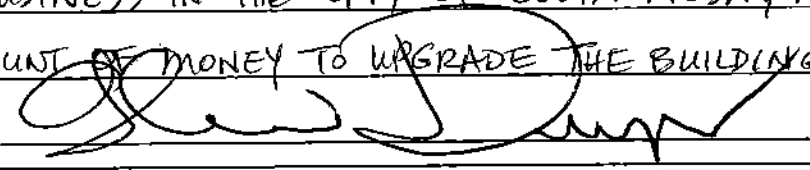
PLEASE SEE ATTACHED 5 PAGES AND 4 PICTURES AND DR-05-05 SITE PLAN

① SUMMARY :-

WE HEREBY OPPOSE TO DR-05-05 AND REQUEST CONTINUANCE FOR FURTHER  
STUDIES BY THE PLANNING COMMISSION AND THE TRANSPORTATION &  
CIRCULATION COMMISSION OF THE CITY OF COSTA MESA.

② WE PLACE THE CITY ON NOTICE, THAT BY ALLOWING ONE OWNER TO  
HIS PROPERTY RIGHTS AND THUS GRANTING APPROVAL OF DR-05-05,  
THE CITY IS CREATING A HAZARDOUS SITUATION AT 2318/2320  
NEWPORT BLVD. WHERE THERE WILL BE SERIOUS RISKS TO HUMAN  
LIVES AND PROPERTY DAMAGES, BOTH ON PREMISES OF 2318/2320  
AS WELL AS ON NEWPORT BLVD.

③ THE CITY IS MAKING IT EXTREMELY DIFFICULT FOR SURROUND SOUND TO  
DO ITS NORMAL BUSINESS IN THE CITY OF COSTA MESA, AFTER HAVING  
SPENT A GREAT AMOUNT OF MONEY TO UPGRADE THE BUILDING AT 2318.

Date: 7/26/05 Signature: 

For Office Use Only — Do Not Write Below This Line  
SCHEDULED FOR THE CITY COUNCIL/PLANNING COMMISSION MEETING OF:

RECEIVED  
CITY OF COSTA MESA  
DEVELOPMENT SERVICES DEPARTMENT

JUL 26 2005

# **APPLICATION FOR APPEAL OR REHEARING**

**City of Costa Mesa, CA 92626**

*Appeal against decision upon DR-05-05 of 2314 Newport Blvd. approved by Planning Department staff on 19 July 2005*

*Made by Glenford G. Dwyer representing a business Surround Sound at 2318 Newport Blvd. on 26 July 2005*

## **Reasons for the Appeal:**

**WE OPPOSE AND REQUEST CONTINUANCE FOR FURTHER STUDIES OF SUBJECT DR BY THE PLANNING COMMISSION AND THE TRANSPORTATION & CIRCULATION COMMISSION.**

**WE PLACE THE CITY ON NOTICE, THAT BY APPROVING SUBJECT DR, THE CITY IS CREATING AN EXTREMELY HAZARDOUS SITUATION BOTH ON NEWPORT BLVD AND ON OUR PREMISES.**

**BY GRANTING ONE OWNER HIS PROPERTY RIGHTS, THE CITY IS MAKING IT EXTREMELY DIFFICULT FOR US TO CONDUCT A NORMAL COURSE OF BUSINESS IN THE CITY OF COSTA MESA.**

## **Explanations of the above Reasons:**

We were told repeatedly that the DR complies with code. However, by allowing one property owner his rights, the City has created serious hazards on Newport Blvd. and on our premises.

### **(1) Traffic hazard on Newport Blvd.:**

Since the building proposed on 2314 Newport Blvd. is 30 ft in height, it will be approximately 7ft higher than ours, and it is also 6 ft further into Newport Blvd. It will block our building almost completely from view while a motorist is driving northbound on the Blvd.

Any motorist driving on the right slow lane trying to find our business and attempting to drive into our driveway will only see our front sign (the one directly facing the Blvd. as the one facing 2314 is now totally hidden) at approximately 100 ft from our driveway. Because the sign is seen at an angle, it is clear only when the motorist is approximately 60 ft away from the 90 degree turn.

Please see attached Exhibit 1 – showing a motorist's view from the right slow lane at 100 ft from our driveway without the building.

Exhibit 2 – showing a motorist's view from the right slow lane at 100 ft from our driveway after the building is constructed.

Exhibit 3 – showing a motorist's view from the right slow lane at 60 ft from our driveway without the building.

Exhibit 4- showing a motorist's view from the right slow lane at 60 ft from our driveway after the building is constructed.

The motorist will have to slow from 45 mph (speed limit) to 5 mph to be able to enter our 10 ft wide driveway at a sharp right angle, or to park in front in one of the very limited 5 parking spaces, if at all available at the time.

According to the DMV 2005 Handbook, page 53, at 55 mph a normal-sized vehicle takes 400 ft to stop, and a truck takes 800 ft to stop. According to [www.keepkidsalivedrive25.org](http://www.keepkidsalivedrive25.org), at 40 mph the distance necessary to stop a normal-sized vehicle is 189 ft. That requires the motorist to slam on his brakes to stop the car abruptly. Although a motorist will have to slow down only to 5 mph to turn into our driveway, taking away a second or two of response time, the 60 ft lead up is not sufficient. He needs about 189 ft. even if he slams on his brakes.

*It appears that the City is implicitly imposing a condition whereby any motorist traveling within the legal speed limit of the Blvd. will have to slam hard on his brakes in order to access our business, whether to park or to enter our driveway.*

Please bear in mind a good part of our business is to custom-install sound systems in customers' cars and boats. We often service RV's such as trailers and boats and they are much longer or wider than a normal-sized car. These vehicles require 300 ft safe distance to slow down enough to access our premises.

Imagine that just as the motorist turning into our driveway, on which the handicap walkway must be striped on by the City's code, and he sees either (a) a handicap person moving slowly on a wheelchair, or (b) a mother with 2 young kids jumping about and taking some time to enter our front door, or (c) an elderly person moving slowly on the walkway, or (d) a delivery truck that temporarily parks there and not able to pass through the narrow 10 ft wide driveway, this motorist has to stop abruptly to avoid running over them. The motorist behind him, frequently traveling at 50 mph, will not be able to stop quickly enough and will hit his vehicle at the rear end. Other motorists may slam into this second motorist and a chain of accidents may occur. This kind of accidents that may cause serious personal injuries can happen 6 days a week for at least 10 hours a day when customers and delivery trucks need to access our premises. Even when accidents can be avoided, there will be serious congestions on the Blvd. because cars need to slow down to 5 mph to enter.

- (2) Potential serious risk to human lives and costly property damages on our premises:  
Our front entrance door opens into the 10 ft wide driveway and is frequently used 6 days a week for about 10 hours a day. Previously, when Mr. John Geyer, owner of 2314 Newport Blvd. with subject DR, was operating Preferred Autosound on the same premises we occupy now, there was a gate entrance width of 18 ft. Mr. Geyer ran that business from 1996 to 2003 and it was part of his business then, as

it is of ours now, to allow vehicles and boats (longer and wider than normal-sized passenger cars) to access via this gate. Mr. Geyer owned both 2314 and 2318/2320 Newport Blvd. up until he sold 2318/2320 in March 2004.

Personal injury and property damages can occur:

(a) When a motorist cannot see a pedestrian, especially a slow-moving person, because the building at 2314 blocks the view before he makes a turn from Newport Blvd, he may not stop quickly enough and run over the pedestrian on the handicap walkway accessing or coming out of our front door. This pedestrian could be our customer, employee, delivery person, United States Postal Services employee, or even a City inspector.

(b) When a vehicle is driving through our driveway, an unsuspecting person may open our front door into the vehicle in motion.

(3) Our right to safe, adequate and fair access is taken away:

If the City had considered a 10 ft wide driveway to be safe, it would not have a Code that requires 14 ft minimum width for any new development. The building at 2314 has a wall that allows us a driveway only 10 ft. wide. When our front door is opened that driveway width is further reduced to 7 ft.

Whether there is code or not pertaining to 2318 which was probably built before the code was in effect is not the issue. The issue is that our driveway has now been made unsafe and inadequate (10 ft vs. the now required 14 ft). Our business has the right to safe, adequate and fair access, and this right has been taken from us.

As at 23 Jun 2005, a chain fence has been constructed around 2314 Newport Blvd. This fence is 10 ft from our driveway and front door. The hazards that we cited are real and are already happening everyday. Just yesterday, someone nearly slammed our front door into a tow-truck that was trying slowly and cautiously to pass our driveway.

(4) Limitation on our ability to conduct normal course of business:

Surround Sound has a valid business license to conduct business in the City of Costa Mesa, and the nature of our business is a continuance of that of Preferred Autosound. Our business entails custom-installation of sound systems in vehicles and boats, and often these are RV's longer and wider than normal-sized vehicles. The driveway at 10 ft wide cannot accommodate the access. This limitation takes away part of our business.

A customer with a trailer or pulling a boat cannot park at our front and cannot park on the sidewalk. By not being able to see us sufficiently far away so as to slow down enough to access our premises, he'll likely miss our shop parking spaces or driveway. Even if we were to tell them to access via the rear public

alley, customers not familiar with the streets will not easily find the alley or know how to access us via the common area that is usually fully occupied by a separate business operating at 2320 (the rear part of the building). Our sign cannot be seen from the public alley.

The City has plans to close alleys in the Newport Blvd. Special Plan (NBSP), but the City cited a narrow lot width of 60 ft as the condition whereby the City deems not feasible to require elimination of the alley access to 2314 Newport Blvd. This was explicitly worded in the City's 19 Jul 2005 letter to Mr. John Geyer. Please note that 2314 has a driveway 15 ft wide.

Given that our lot width is the same, and our driveway is now narrowed to 10 ft, we believe rear alley access (provided that the occupant of 2320 Newport Blvd. agrees) is vital to our business survival. Postal trucks and ground service delivery trucks presently cannot park at the limited number (5) of parking spaces in front of our shop. They used to be able to get through the driveway and park in the common area. They may not park on the sidewalk since they will obstruct traffic. That means our right to enjoy normal delivery services has been taken away.

(5) Our customers will not do business with us because:

They perceive the risk of accessing our front door and our driveway; they fear personal injury and damage to their property.

They cannot see us, miss our premises while driving by, or simply cannot find us. They cannot find the rear public alley or the entrance to our business because the rear of the building is not occupied by us.

(6) Potential liability on premises means higher insurance cost and law suits:

Accidents that happen on premises will cause our insurance premium to increase, if not the entire policy denied.

Chances of law suits for personal injury or property damage against us is becoming a reality. Legal costs and compensation can be sky high, especially given the fact that our clientele are high-net-worth individuals owning expensive vehicles.

The risk of conducting business at this location is now significantly increased by the action of the City.

Where there is a claim against us, or if a complaint is filed against us, we will have no choice but to file a cross complaint against the City. The Plaintiff himself will likely file suit against the City for gross negligence.

*In summary, we oppose to the decision of subject DR because it:*

1. Creates potential serious accidents and congestion on Newport Blvd.
2. Puts the lives of our customers, employees and delivery persons (including government personnel) at risk 6 days a week on our premises.
3. Deprives our business of safe, adequate and fair access.
4. Severely impedes our business viability due to the danger our customers will fear in visiting our showroom, the size limit of vehicles accessing our installation area, loss of visibility, increase our liability and increase cost of insurance, as well as putting us in jeopardy of law suits.

**WE REQUEST THE PLANNING COMMISSION TO:**

1. **Further study of the above issues and allow continuance of the DR review by all the relevant departments at an escalated level.**
2. **Grant signage exception and permit us to raise our sign (on both walls) to a height viewable from 400 ft by a motorist traveling on the right slow lane of northbound Newport Blvd.**
3. **Confirm to us in writing that the rear public alley access will not be restricted or eliminated, similar to that granted to 2314 Newport Blvd. in DR-05-05.**



# **CITY OF COSTA MESA**

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

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DEVELOPMENT SERVICES DEPARTMENT

**FOR ATTACHMENTS NOT INCLUDED IN THIS REPORT,  
PLEASE CONTACT THE PLANNING DIV. AT (714)754-5245.**